



CITY COUNCIL AGENDA STATEMENT



SEPTEMBER 4, 2007, Item 2

ITEM TITLE: OVERVIEW OF THE PROPOSED NEW FUNCTIONS AND DUTIES OF THE CVRC
SUBMITTED BY: ACTING COMMUNITY DEVELOPMENT DIRECTOR *ABA*
REVIEWED BY: CITY MANAGER *JS*

4/5THS VOTE: YES ☐ NO ☐

BACKGROUND

In March 2006, the Chula Vista Redevelopment Corporation (CVRC) was granted a number of planning and redevelopment functions for projects located within redevelopment areas. The planning functions included those previously performed by the Design Review Commission (DRC), Resource Conservation Commission (RCC), and the Planning Commission, including decision-making and recommendation authority to issue various permits and certify environmental documents. It should be noted that all CVRC decisions on administrative and quasi-judicial land use matters are appealable to the City Council/Redevelopment Agency.

The redevelopment functions of the CVRC include both decision-making and recommendation authority over various types of development agreements, replacement housing plans, redevelopment plans and other financial transactions. Both the redevelopment and planning functions are described in greater detail in Attachments 1 and 2 to this staff report.

The following informational report provides a summary overview of the proposed *new* functions and duties of the CVRC related to the review of development projects and the redevelopment responsibilities of the Corporation. The City Attorney's office has also prepared a memorandum concerning these proposed changes which is included with this report as Attachment 3. As an informational report, no formal action is required by the Board or Council on this agenda item.

DISCUSSION

The CVRC provides the City and the public an important, independent forum and decision-making body solely dedicated to planning and redevelopment activities within the City's redevelopment project areas. By consolidating the functions and duties of the DRC, RCC, Planning Commission, and Chula Vista Redevelopment Agency (Agency) into a single review body, the CVRC provides continuity, consistency, and clarity for development activities within redevelopment project areas. The technical depth and professional expertise of the seven-member CVRC Board also supports well-informed, balanced decisions to ensure development projects of the highest quality in Chula Vista. This report outlines in greater detail the four new proposed functions and responsibilities of the CVRC.

Redevelopment Agency Functions

The goal of the Agency is to create a vital community through the establishment of collaborative public/private partnerships. This requires a strategic focus on creating economic vitality, market confidence, vibrant environments, robust commerce, and a sense of community. The CVRC provides that focus through its unique and independent forum, and by making final decisions and advisory recommendations to the Agency on plans, policies, and agreements, which are outlined in Attachment 1. It is important to note that certain fiduciary responsibilities or statutory authorities of the Agency are non-delegable functions that the CVRC cannot make independent and final decisions on. At this time, staff is proposing that the CVRC be given additional authority in the following areas:

1. Contracting for consultant, contractor and vendor services

In carrying out the duties of the Agency it is sometimes necessary to contract with independent third party consultants in preparing and reviewing developer pro-forma's, re-use and fair market appraisals, remediation work plans, construction estimates and summary reports prepared in accordance with the Health and Safety Code.

2. Issuing Requests for Proposals and Qualifications (RFP/Q)

A fundamental role in the redevelopment process is the search for either qualified developers or developer proposals. This role is typically carried out through the issuance of an RFP/Q where a developer submits their qualifications and an idea of their proposal. The most qualified developer would then be invited to enter into an Exclusive Negotiating Agreement (ENA) with the CVRC where all the details of the project would be worked out and memorialized in a Disposition and Development Agreement (DDA) for Agency consideration.

3. Acquisition and Disposition of Property, not through eminent domain

One of the primary roles of redevelopment is the acquisition of land that eliminates blight within the redevelopment project area. Historically, the Agency has not proactively engaged in the acquisition of key sites when they are up for sale. An

Agency with real estate assets is more readily able to respond to emerging markets, which can spur additional private investment within a redevelopment project area. The proposal is to allow the CVRC, subject to the prior approval of the Agency or specifically provided for in its budget, coordinate the real estate acquisition process, including scheduling, supervision of the preparation of real estate appraisals, and offers by consultants and obtaining approval of purchase prices, if required, from the Agency. In addition, the Corporation shall prepare all necessary agreements for consideration and approval by the Agency for the Disposition of property necessary to execute a real estate transaction.

A critical point is that the ability for the CVRC to contract for service or acquire property would be dependant upon Agency approval of an annual operating budget for the CVRC. The CVRC would not be able to contract for services or acquire property that would exceed the approved annual budget. Prior to the CVRC entering into any contracts the Agency Treasurer/City Finance Director would provide a certification that funds were available. Even with the above additions to the CVRC roles and responsibilities, all final fiduciary responsibilities remain with the Agency/City Council.

Planning Functions

The CVRC has assumed the majority of the functions of the Planning Commission, DRC and RCC, some of which are outlined in Attachment 2. These Commissions did and now the CVRC does evaluate design, review environmental reports and consider major land use proposals; conduct public hearings on significant planning, zoning, and land subdivision matters; and recommend actions and policies to the City Council/Agency. Staff proposes that the CVRC be given the following additional authority:

1. Approve Tentative Maps

"A tentative map is made for the purpose of showing the design and improvement of a proposed subdivision and the existing condition in and around it...The tentative map facilitates the division of land and provides clear transfer of ownership of any lots that are created. The tentative map is the parcel configuration proposed prior to a final or parcel map."

The proposal would be to allow the CVRC to approve the tentative map, which is submitted as part of a projects entitlement process. The final or parcel map would still require the approval of the City Council. In some cities -- e.g. San Diego and San Jose -- this authority is delegated to the Planning Director.

As noted above, all decisions made by the CVRC in carrying out the roles and responsibilities of the Planning Commission, Design Review Commission and Resource Conservation Committee are appealable to the City Council.

CONCLUSION

Staff recommends the CVRC be granted the additional authority outlined above and to make the necessary changes to any documents as may be required. This will allow the CVRC to move forward the redevelopment work program with greater autonomy yet still under the ultimate control of the City Council sitting as the Redevelopment Agency.

ATTACHMENTS

1. CVRC **Redevelopment** Roles and Responsibilities
2. CVRC **Planning** Roles and Responsibilities
3. August 29, 2007 City Attorney Memorandum re CVRC Scope of Responsibilities

Prepared by: Eric Crockett, Redevelopment Manager, Community Development

Chula Vista Redevelopment Corporation
Redevelopment Roles and Responsibilities
8.14.07

The following chart provides a list of the redevelopment related functions the CVRC is currently authorized to provide (in black) and those the CVRC is proposed to provide (in blue):

	DECISIONS	RECOMMENDATIONS
REDEVELOPMENT FUNCTIONS	<p>CVRC shall assume and carry out redevelopment functions of the Redevelopment Agency with respect to the following items:</p> <ul style="list-style-type: none"> • Exclusive negotiating agreements • Replacement housing plans • Loans and expenditures involving CVRC funds • Enter into contracts (i.e. consultants, contractors, vendors) • Solicit participation by developers (RFQ and RFP) • Acquire property, not through eminent domain 	<p>CVRC shall review and make recommendations to the Redevelopment Agency on the following legislative (CVMC §2.55.060(A)) and/or fiduciary (Bylaws) items:</p> <ul style="list-style-type: none"> • Disposition and development agreements • Owner participation agreements • Purchase and sale agreements • Eminent domain • Redevelopment plans and implementation plans • Relocation plans • Financial transactions not involving CVRC funds (such as issuance of tax increment bonds)

Chula Vista Redevelopment Corporation
Planning Roles and Responsibilities
8.14.07

The following chart provides a list of Planning related functions the CVRC is currently authorized to provide (in Black) and those the CVRC is proposed to provide (in Blue):

	DECISIONS	RECOMMENDATIONS
PLANNING FUNCTIONS	<p>CVRC shall assume and carry out the planning functions within redevelopment areas with respect to the following administrative and quasi-judicial items:</p> <ul style="list-style-type: none"> • Design review for the establishment, location, expansion or alteration of uses or structures in all residential zones, commercial, industrial, mixed use zones and within redevelopment project area boundaries • Variances • Conditional use permits • Lot line adjustments • Historical permits • Other administrative and quasi-judicial planning items • Appeals filed to contest sign permit rulings of the executive director or zoning administrator • Coastal development permits (within LCP permit jurisdiction) • Tentative maps • Environmental documents or exemptions for all of the above items 	<p>CVRC shall review and make recommendations to the City Council within redevelopment areas on the following legislative items* (§2.55.050(A)):</p> <ul style="list-style-type: none"> • General plan, specific plans, general development plans, precise plans, and sectional planning areas • Local coastal plan • Zoning regulations and rezones • Planning-related development agreements • Environmental documents or exemptions for the above <p><i>*In addition to recommendation by the Planning Commission</i></p>



OFFICE OF THE CITY ATTORNEY

OPINION OF CITY ATTORNEY

DATE: August 29, 2007

TO: The Honorable Mayor and City Council
CVRC Board of Directors
David Garcia, City Manager

FROM: Ann Moore, City Attorney *A.M.*

SUBJECT: Chula Vista Redevelopment Corporation Scope of Responsibilities

This memorandum has been prepared to provide background information regarding expanding the responsibilities of the Chula Vista Redevelopment Corporation ("CVRC"). There are some legal restrictions that impact the scope of duties the CVRC may be given, as a nonprofit corporation. A part of this analysis was originally provided by Joel Kuperberg, special council hired by the City for the original formation of the CVRC.

There are essentially two forms of restrictions on the scope of responsibilities that may be delegated to the CVRC. First, a city may not delegate its essential legislative functions to non-legislative bodies, agencies or entities. (*Kuglar v. Yocum* (1968) 69 Cal.2d 371, 375-376; *Bagley v. Manhattan Beach* (1976) 18 Cal.3d 22; *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278). A legislature's essential functions are the formulation of legislative policies and goals, and the making or changing of laws. The purpose of this doctrine is to ensure that the legislative body resolves fundamental policy issues. This means that only the Chula Vista City Council ("City Council") may adopt or amend major policy documents such as general plans, specific plans and redevelopment plans. In addition, neither the City of Chula Vista ("City") nor the City's Redevelopment Agency ("Agency") may delegate its eminent domain powers to a nonprofit entity. *Shapiro v. Board of Directors of the Centre City Development Corporation* (2005) 134 Cal. App. 4th 170.

However, a city may delegate quasi-legislative, quasi-judicial or administrative functions to other bodies, as long as such delegation is subject to definite standards and adequate safeguards to prevent the exercise of unfettered discretion. (*Kuglar v. Yocum* (1968) 69 Cal.2d 371, 375-376; *Bagley v. Manhattan Beach* (1976) 18 Cal.3d 22; *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278; *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal. App.4th 366, 376-377. Therefore, the City may after establishing policies and creating standards, confer administrative and quasi-judicial authority to other entities. Matters such as conditional use permits, tentative maps, final maps and the issuance of building permits may be delegated to the CVRC. In addition, other administrative functions, such as contracting for

services (provided it meets the other requirements discussed below) can also be delegated to the CVRC.

Finally, State requirements relating to nonprofit corporations must be met. Additional requirements are also triggered if such entity is also formed as a public benefit corporation. In order to prevent fraud, public benefit corporations are subject to various organizational and operational restrictions.

The City must maintain the power to appoint the board members of the nonprofit corporation and direct the policies, programs and activities of the corporation. (IRC Section 509(a)(3); see also *Janet E. Gitterman, Supporting Organization Reference Guide: IRC 509(a)(3) Foundation Status Classification*, (p. 8). The nonprofit corporation must satisfy the IRS test, by demonstrating that it is operated, supervised or controlled by the governmental entity. This can be satisfied by evidence that the governmental entity exercises a "substantial degree of direction over the policies, programs and activities of a nonprofit corporation." (*Gitterman*, p.8; *Treas/ Reg/ 1.509(a)-4(g)*).

Now that the City Council are no longer majority members of the CVRC, in order to meet IRS requirements, significant financial, operational and ownership decisions must be subject to approval of the City Council. The City's outside counsel, Joel Kuperberg, has opined that this means that the adoption of CVRC's annual budget, the purchase and disposition of real property and the approval of certain types of contracts must be approved by the City Council.¹ There is no case law, that specifically addresses this issue, but *Shapiro*, does provide us with guidance with respect to what types of activities that may be delegated to a nonprofit corporation.

In *Shapiro*, the court explains how CCDC is given an annual budget by the City of San Diego's Redevelopment Agency for the acquisition of real property on behalf of the Redevelopment Agency. CCDC is responsible for obtaining an appraisal of each property. As the trial of each eminent domain lawsuit approaches, CCDC acting as the Redevelopment Agency's representative, will make a final good faith offer to the property owner. Any settlement is subject to the CCDC Boards' finding that the settlement is within the budget allocated by the Redevelopment Agency for the acquisition of real property.

Therefore, we would suggest, a similar approach be established for the CVRC, in that the acquisition of property by CVRC, be subject to the prior approval by the Agency or be specifically provided for in its budget. In addition, since any property held by the CVRC is held

¹ Section 2.01(h) of the Operating Agreement by and between the City of San Diego, San Diego Redevelopment Agency and Centre City Redevelopment Corporation ("CCDC Agreement") provides that CCDC shall coordinate the real estate acquisition process ...and (Section 2.01(i)) states that CCDC shall ... "undertake any and all activity, which may be necessary and helpful to the disposal of Project land, including ..prepare disposition agreements..."

for the benefit of the Agency, it would be appropriate for the Agency to approve the disposition of any of its property. Finally, CVRC may enter into contracts for the expenditure of funds, along as it is not in excess of the funds provided in its budget. However, there should be safeguards in place, such as requiring a certification of availability of funds from the City's Finance Director prior to entering into contracts.²

In conclusion, the City and/or Agency can delegate to the CVRC quasi-judicial authority to approve various land use permits such as conditional use permits and tentative maps. They can also conduct administrative functions such as final map approvals, management activities and supervise and administer programs established by the Agency or City. The City may also delegate authority to the CVRC, subject to safeguards, to enter into contracts for the expenditure of funds not in excess of funds provided in its budget.

² A similar provision is provided in the Section 2.05 of the CCDC Agreement.